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ALPHABET INC. and GOOGLE LLC

12 UNITED STATES DISTRICT COURT  
13  
14 NORTHERN DISTRICT OF CALIFORNIA  
15  
16 SAN JOSE DIVISION

17 SPACE DATA CORPORATION,

18 Plaintiff,

19 v.

20 ALPHABET INC. and GOOGLE LLC,

21 Defendants.

Case No. 5:16-cv-03260-BLF

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

Judge: Hon. Beth Labson Freeman

Date Filed: June 13, 2016

Trial Date: June 3, 2019

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the

medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely sensitive "Confidential Information or Items" representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.13 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery

1 Material in this action.

2 2.15 Professional Vendors: persons or entities that provide litigation support services  
3 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
4 organizing, storing, or retrieving data in any form or medium) and their employees and  
5 subcontractors.

6 2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
7 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” or as  
8 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

9 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
10 Producing Party.

### 11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material  
13 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
14 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
15 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
16 However, the protections conferred by this Stipulation and Order do not cover the following  
17 information: (a) any information that is in the public domain at the time of disclosure to a  
18 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
19 a result of publication not involving a violation of this Order, including becoming part of the  
20 public record through trial or otherwise; and (b) any information known to the Receiving Party  
21 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
22 obtained the information lawfully and under no obligation of confidentiality to the Designating  
23 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

### 24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by  
26 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
27 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
28 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after

the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

## 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'

1 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains  
2 protected material. If only a portion or portions of the material on a page qualifies for protection,  
3 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
4 appropriate markings in the margins) and must specify, for each portion, the level of protection  
5 being asserted.

6 A Party or Non-Party that makes original documents or materials available for inspection  
7 need not designate them for protection until after the inspecting Party has indicated which  
8 material it would like copied and produced. During the inspection and before the designation, all  
9 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
10 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
11 copied and produced, the Producing Party must determine which documents, or portions thereof,  
12 qualify for protection under this Order. Then, before producing the specified documents, the  
13 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
15 CODE) to each page that contains Protected Material. If only a portion or portions of the material  
16 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
17 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
18 portion, the level of protection being asserted.

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
20 the Designating Party identify on the record, before the close of the deposition, hearing, or other  
21 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
22 impractical to identify separately each portion of testimony that is entitled to protection and it  
23 appears that substantial portions of the testimony may qualify for protection, the Designating  
24 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
25 a right to have up to 21 days to identify the specific portions of the testimony as to which  
26 protection is sought and to specify the level of protection being asserted. Only those portions of  
27 the testimony that are appropriately designated for protection within the 21 days shall be covered  
28 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may

1 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the  
 2 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 3 ATTORNEYS’ EYES ONLY.”

4 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
 5 other proceeding to include Protected Material so that the other parties can ensure that only  
 6 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
 7 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
 8 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
 9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

10 Transcripts containing Protected Material shall have an obvious legend on the title page  
 11 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
 12 pages (including line numbers as appropriate) that have been designated as Protected Material and  
 13 the level of protection being asserted by the Designating Party. The Designating Party shall  
 14 inform the court reporter of these requirements. Any transcript that is prepared before the  
 15 expiration of a 21-day period for designation shall be treated during that period as if it had been  
 16 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
 17 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
 18 actually designated.

19 (c) for information produced in some form other than documentary and for any  
 20 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
 21 container or containers in which the information or item is stored the legend “CONFIDENTIAL”  
 22 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
 23 CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item  
 24 warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
 25 portion(s) and specify the level of protection being asserted.

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 27 designate qualified information or items does not, standing alone, waive the Designating Party’s  
 28 right to secure protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the material is  
2 treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4       6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
7 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
9 original designation is disclosed.

10       6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
11 process by providing written notice of each designation it is challenging and describing the basis  
12 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
13 notice must recite that the challenge to confidentiality is being made in accordance with this  
14 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
15 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
16 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
17 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
18 designation was not proper and must give the Designating Party an opportunity to review the  
19 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
20 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
21 stage of the challenge process only if it has engaged in this meet and confer process first or  
22 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
23 a timely manner.

24       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
25 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
26 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days  
27 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
28 process will not resolve their dispute, whichever is earlier. Each such motion must be



1 accompanied by a competent declaration affirming that the movant has complied with the meet  
 2 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
 3 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
 4 shall automatically waive the confidentiality designation for each challenged designation. In  
 5 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
 6 time if there is good cause for doing so, including a challenge to the designation of a deposition  
 7 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
 8 accompanied by a competent declaration affirming that the movant has complied with the meet  
 9 and confer requirements imposed by the preceding paragraph.

10 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 11 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
 12 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
 13 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
 14 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
 15 material in question the level of protection to which it is entitled under the Producing Party's  
 16 designation until the court rules on the challenge.

## 17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
 19 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 20 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
 21 the categories of persons and under the conditions described in this Order. When the litigation  
 22 has been terminated, a Receiving Party must comply with the provisions of section 15 below  
 23 (FINAL DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a location and  
 25 in a secure manner that ensures that access is limited to the persons authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
 27 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
 28 disclose any information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
 2 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
 3 information for this litigation and who have signed the "Acknowledgment and Agreement to Be  
 4 Bound" that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the  
 6 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
 7 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
 9 reasonably necessary for this litigation and who have signed the "Acknowledgment and  
 10 Agreement to Be Bound" (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, and  
 13 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
 14 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is  
 16 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
 17 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
 18 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
 19 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
 20 under this Stipulated Protective Order.

21 (g) the author or recipient of a document containing the information or a custodian  
 22 or other person who otherwise possessed or knew the information.

23 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and  
 24 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items. Unless otherwise  
 25 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
 26 disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS'  
 27 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

28 (a) the Receiving Party's Outside Counsel of Record in this action, as well as

employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Designated House Counsel of the Receiving Party (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed<sup>1</sup>;

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Designated House Counsel or Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable

<sup>1</sup> This Order contemplates that Designated House Counsel shall not have access to any information or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 future primary job duties and responsibilities in sufficient detail to determine if House Counsel is  
 2 involved, or may become involved, in any competitive decision-making.

3 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the  
 4 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
 5 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 6 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c)  
 7 first must make a written request to the Designating Party that (1) identifies the general categories  
 8 of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
 9 CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to  
 10 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her  
 11 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s  
 12 current employer(s), (5) identifies each person or entity from whom the Expert has received  
 13 compensation or funding for work in his or her areas of expertise or to whom the expert has  
 14 provided professional services, including in connection with a litigation, at any time during the  
 15 preceding five years<sup>2</sup>, and (6) identifies (by name and number of the case, filing date, and location  
 16 of court) any litigation in connection with which the Expert has offered expert testimony,  
 17 including through a declaration, report, or testimony at a deposition or trial, during the preceding  
 18 five years.

19 (b) A Party that makes a request and provides the information specified in the  
 20 preceding respective paragraphs may disclose the subject Protected Material to the identified  
 21 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party  
 22 receives a written objection from the Designating Party. Any such objection must set forth in  
 23 detail the grounds on which it is based.

24 (c) A Party that receives a timely written objection must meet and confer with the  
 25 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by

26 \_\_\_\_\_  
 27 <sup>2</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
 28 party, then the Expert should provide whatever information the Expert believes can be disclosed  
 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert  
 shall be available to meet and confer with the Designating Party regarding any such engagement.

1 agreement within seven days of the written objection. If no agreement is reached, the Party  
 2 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as  
 3 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)  
 4 seeking permission from the court to do so. Any such motion must describe the circumstances  
 5 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or  
 6 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
 7 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
 8 must be accompanied by a competent declaration describing the parties' efforts to resolve the  
 9 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and  
 10 setting forth the reasons advanced by the Designating Party for its refusal to approve the  
 11 disclosure.

12 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the  
 13 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
 14 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
 15 Material to its Designated House Counsel or Expert.

#### 16 8. PROSECUTION BAR

17 Absent written consent from the Producing Party, any individual who receives access to  
 18 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –  
 19 SOURCE CODE" information shall not be involved in the prosecution of patents or patent  
 20 applications relating to high-altitude platforms or communication technology suitable for use in  
 21 such platforms, including without limitation the patents asserted in this action and any patent or  
 22 application claiming priority to or otherwise related to the patents asserted in this action, before  
 23 any foreign or domestic agency, including the United States Patent and Trademark Office ("the  
 24 Patent Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly  
 25 drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.<sup>3</sup>  
 26 To avoid any doubt, "prosecution" as used in this paragraph does not include representing a party  
 27

28 <sup>3</sup> Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue  
2 protest, ex parte reexamination, inter partes review, post grant review, or covered business  
3 method review). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –  
4 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information  
5 is first received by the affected individual and shall end three (3) years after final termination of  
6 this action.

7 9. SOURCE CODE

8 (a) To the extent production of source code becomes necessary in this case, a  
9 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE”  
10 if it comprises or includes confidential, proprietary or trade secret source code.

11 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE  
12 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –  
13 ATTORNEYS’ EYES ONLY” information including the Prosecution Bar set forth in Paragraph  
14 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and  
16 7.4, with the exception of Designated House Counsel.

17 (c) Any source code produced in discovery shall be made available for  
18 inspection, in a format allowing it to be reasonably reviewed and searched, during normal  
19 business hours or at other mutually agreeable times, at an office of the Producing Party’s counsel  
20 or another mutually agreed upon location. The source code shall be made available for inspection  
21 on a secured computer (the “Source Code Computer”) in a secured room without Internet access or  
22 network access to other computers, and the Receiving Party shall not copy, remove, or otherwise  
23 transfer any portion of the source code onto any recordable media or recordable device. The  
24 Source Code Computer shall have disk encryption and be password protected. Use or possession of any  
25 input/output device (e.g., USB memory stick, mobile phone or tablet, camera or any camera-enabled  
26 device, CD, floppy disk, portable hard drive, laptop, or any device that can access the Internet or any other  
27 network or external system, etc.) is prohibited while accessing the Source Code Computer. All persons  
28 entering the locked room containing the Source Code Computer must agree to submit to reasonable

1 security measures to ensure they are not carrying any prohibited items before they will be given access to  
2 the locked room. The Source Code Computer will be made available for inspection during regular business  
3 hours, upon reasonable notice to the producing party, which shall not be less than 3 business days in  
4 advance of the requested inspection, unless otherwise agreed. The Producing Party may visually  
5 monitor the activities of the Receiving Party's representatives during any source code review, but  
6 only to ensure that there is no unauthorized recording, copying, or transmission of the source  
7 code.

8 (d) The Receiving Party may request paper copies of limited portions of source  
9 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports,  
10 or other papers, or for deposition or trial, but shall not request paper copies for the purposes of  
11 reviewing the source code other than electronically as set forth in paragraph (c) in the first  
12 instance. The Producing Party shall provide all such source code in paper form including bates  
13 numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." Within 5 business days  
14 or such additional time as necessary due to volume requested, the Producing Party will provide  
15 the requested material on watermarked or colored paper bearing Bates numbers and the legend  
16 "HIGHLY CONFIDENTIAL - SOURCE CODE" unless objected to as discussed below. At the  
17 inspecting Party's request, up to two additional sets (or subsets) of printed source code may be  
18 requested and provided by the Producing Party in a timely fashion. Even if within the limits  
19 described, the Producing Party may challenge the amount of source code requested in hard copy  
20 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6  
21 whereby the Producing Party is the "Challenging Party" and the Receiving Party is the  
22 "Designating Party" for purposes of dispute resolution.

23 (e) The Receiving Party shall maintain all paper copies of any printed portions  
24 of the source code in a secured, locked area. Any paper copies used during a deposition shall be  
25 retrieved by the Producing Party at the end of each day and must not be given to or left with a  
26 court reporter or any other unauthorized individual. The Receiving Party shall maintain a record  
27 of any individual who has inspected any portion of the source code (regardless whether in paper  
28 or some other form).



(f) Any printed pages of source code, and any other documents or things reflecting source code that have been designated by the producing party as “HIGHLY CONFIDENTIAL - SOURCE CODE” may not be copied, digitally imaged, e-mailed, transmitted, uploaded, photographed, printed, or otherwise duplicated, except in limited excerpts necessary to attach as exhibits to depositions, expert reports, or court filings as discussed below. For purposes of clarity, the Receiving Party’s outside counsel and/or expert(s) are entitled to take notes relating to the source code; however, they may not copy any portion of the source code into the notes. Furthermore, no copies of all or any portion of the source code may leave the room in which the source code is inspected except as otherwise provided herein, and no other written or electronic record of the source code is permitted except as otherwise provided herein.

(g) The Receiving Party may create an electronic copy, image, or printed copy of limited excerpts of source code only to the extent necessary in a pleading, exhibit, expert report, discovery document, deposition transcript, other Court document, or any drafts of these documents (“SOURCE CODE DOCUMENTS”). The Receiving Party shall only include such excerpts as are reasonably necessary for the purposes for which such part of the Source Code is used. Images or copies of Source Code shall not be included in correspondence between the parties (references to production numbers shall be used instead) and shall be omitted from pleadings and other papers except to the extent permitted herein. The Receiving Party may create an electronic image of a selected portion of the Source Code only when the electronic file containing such image has been encrypted using commercially reasonable encryption software including password protection. The communication and/or disclosure of electronic files containing any portion of source code shall at all times be limited to individuals who are authorized to see source code under the provisions of this Protective Order. Additionally, all electronic copies must be labeled “HIGHLY CONFIDENTIAL - SOURCE CODE.”

#### 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or



1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
2 SOURCE CODE” that Party must:

3 (a) promptly notify in writing the Designating Party. Such notification shall  
4 include a copy of the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or order to issue  
6 in the other litigation that some or all of the material covered by the subpoena or order is subject  
7 to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;  
8 and

9 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
10 Designating Party whose Protected Material may be affected.<sup>4</sup>

11 If the Designating Party timely seeks a protective order, the Party served with the  
12 subpoena or court order shall not produce any information designated in this action as  
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
14 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from  
15 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
16 permission. The Designating Party shall bear the burden and expense of seeking protection in  
17 that court of its confidential material – and nothing in these provisions should be construed as  
18 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
19 another court.

20 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
21 LITIGATION

22 (a) The terms of this Order are applicable to information produced by a Non-  
23 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
24 ATTORNEYS’ EYES ONLY” “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
25 information produced by Non-Parties in connection with this litigation is protected by the  
26

27 <sup>4</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect  
its confidentiality interests in the court from which the subpoena or order issued.

1 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
 2 prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to  
 4 produce a Non-Party's confidential information in its possession, and the Party is subject to an  
 5 agreement with the Non-Party not to produce the Non-Party's confidential information, then the  
 6 Party shall:

7 1. promptly notify in writing the Requesting Party and the Non-Party that  
 8 some or all of the information requested is subject to a confidentiality agreement with a Non-  
 9 Party;

10 2. promptly provide the Non-Party with a copy of the Stipulated Protective  
 11 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
 12 the information requested; and

13 3. make the information requested available for inspection by the Non-Party.

14 (c) If the Non-Party fails to object or seek a protective order from this court  
 15 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
 16 produce the Non-Party's confidential information responsive to the discovery request. If the  
 17 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
 18 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
 19 before a determination by the court.<sup>5</sup> Absent a court order to the contrary, the Non-Party shall  
 20 bear the burden and expense of seeking protection in this court of its Protected Material.

## 21 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
 23 Material to any person or in any circumstance not authorized under this Stipulated Protective  
 24 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
 25 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
 26

27 <sup>5</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
 28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
 interests in this court.

Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

### 13. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return or destroy the specified information and any copies it has and may not sequester, use or disclose the information until the claim is resolved. This includes a restriction against presenting the information to the court for a determination of the claim. Pursuant to Federal Rule of Evidence 502(d) and (e), the production of a privileged or work-product-protected document is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or any other federal or state proceeding.

### 14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable

1 laws and regulations relating to the export of technical data contained in such Protected Material,  
2 including the release of such technical data to foreign persons or nationals in the United States or  
3 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
4 data, and the Receiving Party shall take measures necessary to ensure compliance.

5 14.4 Filing Protected Material. Without written permission from the Designating Party  
6 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
7 the public record in this action any Protected Material. A Party that seeks to file under seal any  
8 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be  
9 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material  
10 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
11 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
12 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
13 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the  
14 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule  
15 79-5(e)(2) unless otherwise instructed by the court.

16 15. FINAL DISPOSITION

17 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
18 Receiving Party must return all Protected Material to the Producing Party or destroy such  
19 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
20 compilations, summaries, and any other format reproducing or capturing any of the Protected  
21 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
22 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
23 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
24 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
25 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
26 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
27 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
28 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work

1 product, and consultant and expert work product, even if such materials contain Protected  
2 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
3 this Protective Order as set forth in Section 4 (DURATION).

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5  
6 Dated: October 19, 2017 HOSIE RICE LLP

7  
8  
9 /s/ Diane S. Rice  
DIANE S. RICE

10 Attorneys for Plaintiff  
11 *SPACE DATA CORPORATION.*

12 Dated: October 19, 2017 KEKER, VAN NEST & PETERS LLP

13  
14 /s/ Matthias A. Kamber  
MATTHIAS A. KAMBER

15 Attorneys for Defendants  
16 *ALPHABET INC. AND GOOGLE LLC*

17  
18 **ATTESTATION**

19 Pursuant to Civil Local Rule 5-1(i)(3), I attest that all other signatories listed, and on  
20 whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

21  
22 Dated: October 19, 2017 By: /s/ Matthias A. Kamber

**[PROPOSED] ORDER**

Pursuant to the foregoing stipulation of the parties and good cause appearing, IT IS SO ORDERED.

DATED: \_\_\_\_\_  
Honorable Beth Labson Freeman  
United States District Judge